

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

GLEN O. MITCHELL,

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

)
)
)
)
)
)
)
)
)
)

CASE NO. 4:08CV3230

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Plaintiff's supplemental motion for attorney fees under 42 U.S.C. § 406(b) (Filing No. 46). The motion is supported by evidence (Filing No. 47) and is unopposed (Filing No. 48).

DISCUSSION

The Court previously awarded attorney fees under 42 U.S.C. § 406(b). The ALJ then ruled that the Plaintiff was underpaid by \$5,772.

42 U.S.C. § 406(b) provides:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a *reasonable* fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may, notwithstanding the provisions of section 405(i) of this title, but subject to subsection (d) of this section, certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

42 U.S.C. § 406(b)(1)(A) (emphasis added).

EAJA fees are paid by the Social Security Administration, while fees awarded under § 406(b) are paid from the Claimant's past-due benefits. *Id.*; *Bear v. Astrue*, 544 F. Supp.

2d 881, 883 (D. Neb. 2008). For the reasons stated in the Court's previous order awarding attorney fees (Filing No. 45), the requested supplemental award of \$1,443, which represents 25% of the underpayment of \$5,772, is approved.

Therefore,

IT IS ORDERED:

1. The Plaintiff's supplemental motion for attorney fees under 42 U.S.C. § 406(b) (Filing No. 46) is granted; and
2. The fee approved in Filing No. 45 is increased by \$1,443.

DATED this 20th day of June, 2011.

BY THE COURT:

S/Laurie Smith Camp
United States District Judge